

U. S. PTO Customer No. 25280

Case #5113

REMARKS

Claims 1-149 were present in the application. Claims 52-55, 86-116, 119-122, 127, 131, 134, 135, 143 and 144 have been canceled without prejudice pursuant to a restriction requirement imposed by the Examiner. Claims 1 and 41 have been amended. No claims have been added. Thus claims 1-51, 56-85, 117, 118, 123-126, 128-130, 132, 133, 136-142 and 145-149 remain subject to continued examination. Each of these claims is believed to be in condition for allowance. Accordingly, an action to that effect is requested at this time.

FORMAL REJECTIONS:

Claims 1 and 41 stand rejected under 35 U.S.C. 112 second paragraph due to use of the phrase "such as" in the claims. The claims in question have been amended to positively recite that the claimed construction is for a carpet tile. Accordingly, reconsideration and withdrawal of all prior formal rejections is requested at this time.

ART REJECTIONS:

Claims 1, 2, 4-7, 14, 16-35, 38-50, 56-60, 62-67, 69-73, 75-80, 117, 123-126, 128-130, 132, 133, 136-142, and 145-149 each stand rejected as being obvious over U.S. patent 4,522,857 to Higgins in view of U.S. patent 5,610,207 to de Simone et al.. Claims 3, 8 and 15 stand rejected as being obvious over U.S. patent 4,522,857 in view of U.S. patent 5,610,207 and further in view of EP 048 986 issued to Dow. Claims 36, 37, 51, 81-85 and 118 stand rejected as being obvious over U.S. patent 4,522,857 in view of U.S. patent 5,610,207 and further in view of

U. S. PTO Customer No. 25280

Case #5113

U.S. patent 5,540,968 to Higgins. Finally, claims 9-13, 61, 68, and 74 stand rejected as being obvious over U.S. patent 4,522,857 in view of U.S. patent 5,610,207 and further in view of U.S. patent 5,616,200 to Hamilton. Thus, each of the rejections is premised upon the combination of the Higgins '857 patent and the de Simone et al. patent.

Applicants respectfully submit that absent the improper use of hindsight reconstruction based on the teachings of the present application there would be no reasonable motivation or suggestion for engaging in the proposed modification for use in a carpet tile or any reasonable expectation that such a combination would be successful in a carpet tile. Accordingly, applicants respectfully submit that a *prima facie* case of obviousness has not been established.

As stated at MPEP §2143, in order to establish a *prima facie* case of obviousness there must be some suggestion or motivation, either in references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the references, or to combine reference teachings. Moreover, there must be a reasonable expectation of success. The suggestion to make the claimed combination and the reasonable expectation of success must be found in the prior art, not in applicants disclosure. *In re Vaeck*, 947 F.2d 488, 20, USPQ2d 1438 (Fed. Cir. 1991). MPEP §2143.01 goes on to state that the mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination.

U. S. PTO Customer No. 25280

Case #5113

In the present instance, the teaching relied upon in de Simone et al. to support the rejection is that rebonded foams are known and that the constituents of such foams may be placed between layers of fabric before the solidification reaction so as to form a laminate with a core of rebonded foam. As best understood, the carpet backing referred to in de Simone et al. is not an integral part of a carpeting construction, much less, a carpet tile. Thus, the portion of de Simone et al. relied upon does not appear to be analogous to the present invention.

In order to more clearly distinguish the presently claimed invention from the limited teachings of de Simone et al., each of the claims is now directed specifically to a construction for a carpet tile. As will be appreciated, a carpet tile is required to maintain a degree of internal dimensional stability substantially greater than that of ordinary broadloom carpeting which is tacked in place by nailing or other techniques. In a carpet tile the individual layers must operate in concert to provide such stability. Traditionally, in order to enhance uniformity, virgin foam has been used in cushioned tile constructions while rebond foam has been used as a separate pad or underlayment for broadloom carpet. The use of rebond foam as an integral constituent of a carpet tile thus represents a departure from prior practice. As best understood, the teachings of de Simone provide no suggestion of the ability to successfully make such a change. Thus, it is respectfully submitted that the conclusion of obviousness is not supportable absent impermissible reference to the teachings of the present application.

CONCLUSION:

On the grounds as set forth above, Applicants respectfully request that all remaining claims be passed to issue. While an attempt has been made to address all outstanding issues, to

U. S. PTO Customer No. 25280

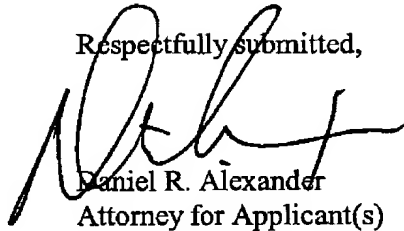
Case #5113

any extent that one or more issues remain, the undersigned respectfully requests a telephone conference to resolve such issues.

Please charge any fees or credit any overpayment in connection with this
Amendment to Deposit Account 04-0500.

April 8, 2003

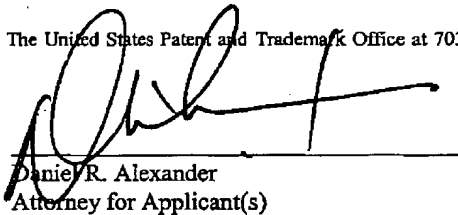
Respectfully submitted,



Daniel R. Alexander
Attorney for Applicant(s)
Registration Number 32,694
Telephone: (864) 503-1372

CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that this correspondence is being transmitted to The United States Patent and Trademark Office at 703-872-9310 on April 8, 2003.



Daniel R. Alexander
Attorney for Applicant(s)

FAX RECEIVED
APR 09 2003
GROUP 1700